

# ARKANSAS SUPREME COURT

No. CR 07-516

FREDRICK LEN HALE  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered      June 7, 2007

PRO SE MOTION FOR BELATED  
APPEAL AND MOTION FOR  
APPOINTMENT OF COUNSEL  
[CIRCUIT COURT OF LONOKE  
COUNTY, CR 2003-264, CR 2004-457,  
HON. LANCE L. HANSHAW, JUDGE]

MOTION FOR BELATED APPEAL  
TREATED AS MOTION FOR RULE  
ON CLERK AND DENIED; MOTION  
FOR APPOINTMENT OF COUNSEL  
MOOT.

## PER CURIAM

In 2004, petitioner Fredrick Len Hale entered a plea of guilty to theft by deception, kidnapping, second-degree domestic battery, aggravated assault on family or household member, first-degree terroristic threatening, second-degree endangering the welfare of a minor, third-degree domestic battery, and possession of a firearm. He was sentenced as a habitual offender, and received an aggregate sentence of 144 months' imprisonment in the Arkansas Department of Correction. In 2006, petitioner filed a petition for writ of habeas corpus in the trial court. The trial court denied the petition on November 30, 2006. A pro se notice of appeal was timely filed by petitioner on December 6, 2006. Petitioner did not tender the record to this court within ninety days of the date of the notice of appeal as required by Ark. R. App. P.—Civil 5(a).

On May 21, 2007, petitioner filed a pro se motion for belated appeal and a motion for appointment of counsel in this court. A motion for belated appeal is treated as a motion for rule on

clerk if a notice of appeal is timely filed. *See Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (per curiam); *see also Muhammed v. State*, 330 Ark. 759, 957 S.W.2d 692 (1997) (per curiam). We need not consider petitioner's grounds for the failure to tender the record in a timely fashion as it is clear that the appeal would be unsuccessful if allowed to go forward. This court will not permit an appeal to go forward where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

Any petition for writ of habeas corpus is properly addressed to the circuit court in the county in which the petitioner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001.<sup>1</sup> Here, petitioner was not within the jurisdiction of the trial court when he filed his petition for writ of habeas corpus in the Circuit Court of Lonoke County, inasmuch as it was not filed pursuant to Act 1780. The Circuit Court of Lonoke County did not have personal jurisdiction over petitioner, and could not release a prisoner not in custody within that county. Ark. Code Ann. §16-112-105 (Repl. 2006); *see Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

Motion for belated appeal treated as motion for rule on clerk and denied; motion for appointment of counsel moot.

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<sup>1</sup>Act 1780 of 2001, as amended by Act 2250 of 2005, and codified as Ark. Code Ann. §§ 16-112-201–207 (Repl. 2006), provides that a writ of habeas corpus can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted.